

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Bogdan Cocosel	Art Unit :	2115
Patent No. :	7,475,267	Examiner :	Unknown
Issue Date :	January 6, 2009	Conf. No. :	9031
Serial No. :	10/816,155		
Filed :	March 31, 2004		
Title :	SYSTEMS AND METHODS FOR DELAY IN STARTUP OF MULTIPLE COMPONENTS		

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**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)**

Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 436 to 883 days, is respectfully requested.

**REMARKS**

“A Delays” are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. To the extent that the periods of delay overlap, the period of any term adjustment shall not exceed the actual number of days the issuance of the patent was delayed.

35 U.S.C. § 154(b)(2)(A). As outlined in Wyeth et al. v. Jon W. Dudas (U.S. District Court, D.C., CA No. 07-1492, Mem. Op. September 30, 2008, 580 FSupp2d 138; 88 USPQ2d 1538), the only way that these periods of time can “overlap” is if they occur on the same day. If an “A delay” occurs on one calendar day and a “B delay” occurs on another calendar day, they do not overlap and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. Id.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, apparently relies on the premise that the application was delayed under 35 U.S.C. § 154(b)(1)(B) *before* the initial three-year period expired. The Wyeth v. Dudas court determined that this

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construction cannot be squared with the language of 35 U.S.C. § 154(b)(1)(B), which applies “if the issue of an original patent is delayed due to the failure of the United States Patent and Trademark Office to issue a patent within 3 years.” “B delay” begins only after the PTO has failed to issue a patent within three years, not before. Id.

#### REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

##### “A Delay”

A first PTO action was due on or before May 31, 2005 (the date that is fourteen months after March 31, 2004, the date on which the application was filed). The PTO mailed the first non-final Office Action on August 21, 2006, thereby according a PTO Delay of 447 days. Patentee does not dispute the PTO’s calculation for this “A Delay” from June 1, 2005 (the day after the date that is fourteen months after the date on which the application was filed), to August 21, 2006. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of “A Delay” detailed above, the total “A Delay” for this patent should be calculated as 447 days.

##### “B Delay”

The period beginning on April 1, 2007 (the day after the date that is three years after the date on which the application was filed), and ending January 6, 2009 (the date the patent was issued), is 647 days in length.

“B Delay” may not include the number of days in the period beginning on the date on which a Notice of Appeal was filed and ending on the date of mailing of a Notice of Allowance. In the present application, no Notice of Appeal was filed. See 37 C.F.R. §§ 1.702(b)(4) and 1.703(b)(4).

In addition, “B Delay” may not include the number of days in the period beginning on the date on which a Request for Continued Examination was filed and ending on the date the patent

was issued. In the present application, no Request for Continued Examination was filed.

See 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1).

"B Delay" for this patent is therefore calculated as 647 days. The PTO calculated only 200 days of delay for issuance of a patent more than three years after filing. Patentee respectfully submits that the PTO's calculation of this "B Delay" is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 647 days.

#### Overlap of "A Delay" and "B Delay"

The "A Delay" and the "B Delay" do not overlap (i.e., occur on the same calendar day).

#### Applicant Delay

A reply to an Office Action was due on or before November 21, 2006 (the date that is three months after August 21, 2006, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on March 8, 2007, thereby according an Applicant Delay of 107 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from August 22, 2006 (the day after the date that is three months after the date on which the Office Action was mailed), to March 8, 2007. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before August 31, 2007 (the date that is three months after May 31, 2007, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on December 10, 2007, thereby according an Applicant Delay of 101 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from September 1, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to December 10, 2007. See id.

A reply to an Office Action was due on or before June 17, 2008 (the date that is three months after March 17, 2008, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on June 20, 2008, thereby according an Applicant Delay of 3 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from June 18, 2008 (the

day after the date that is three months after the date on which the Office Action was mailed), to June 20, 2008. See id.

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent should be calculated as 211 days (i.e., the sum of 107 days, 101 days, and 3 days).

### Conclusion

In consideration of the events described above, Patentee believes the PTA calculation of 436 days is incorrect. As such, Patentee respectfully requests reconsideration of the PTA in the following manner:

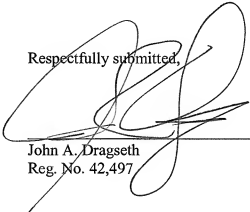
- 1) Total PTO Delay should be calculated as 1,094 days (i.e., the sum of 447 days of "A Delay" and 647 days of "B Delay");
- 2) Total Applicant Delay should be calculated as 211 days; and
- 3) Total PTA should be calculated as 883 days.

This patent is not subject to a terminal disclaimer.

The fee of \$200 required under 37 C.F.R. § 1.18(e) is being submitted herewith. Please apply any other required charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 16113-1324001.

Respectfully submitted,

Date: 3/5/09

  
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